

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BUZZMARKETING, LLC,
117-119 N. Olive Street
Media, PA 19063

Plaintiff,

v.
THE UPPER DECK COMPANY, LLC,
5909 Sea Otter Place
Carlsbad, CA 92008-6621

Case No.

Defendant.

**NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. § 1441(B)
(DIVERSITY)**

Defendant, The Upper Deck Company, LLC, hereby petitions this Court for removal of the civil action from the Court of Common Pleas of Delaware County, Pennsylvania to the United States District Court for the Eastern District of Pennsylvania having received notice of a Civil Action Complaint filed against them in the Court of Common Pleas of Delaware County, Pennsylvania, Docket No. 03-7255 and in support of this notice of removal avers as follows:

1. On July 11, 2003, an action was commenced in the Court of Common Pleas of the State of Pennsylvania, County of Delaware, entitled Buzzmarketing, LLC, v. The Upper Deck Company, LLC, Case Number 03-7255 (the "State Court Action"). A copy of the complaint is attached hereto as Exhibit "A".
2. The first date upon which Defendant was given notice of the above complaint was on or about July 14, 2003, when Defendant, The Upper Deck Company, LLC, ("Upper Deck"), received a copy of the complaint by U.S. Mail. Upper Deck's Notice of Removal is timely because it is filed within thirty (30) days of Defendant's receipt of the complaint, pursuant to 28 U.S.C. § 1446(b). No further proceedings have taken place in the State Court Action.

Diversity of Citizenship

3. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1332, and is one which may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. § 1441(b).

4. There is, and at all relevant times, has been, complete diversity between the parties to this action. According to the complaint, Plaintiff Buzzmarketing, LLC (“Buzzmarketing”) “is a marketing service provider doing business pursuant to the Laws of the Commonwealth of Pennsylvania and located at 117-119 N. Olive St. Media, Delaware County, Pennsylvania, 19063.” (Complaint, ¶ 1.) Defendant The Upper Deck Company, LLC (“Upper Deck”) is, and at all relevant times was, a company incorporated under the laws of the state of Delaware, with principal place of business in Carlsbad, California.

Amount In Controversy

5. The amount in controversy exceeds \$75,000, exclusive of interest and costs, as Plaintiff Buzzmarketing alleges that it is owed sums due on contract for marketing services, which were allegedly provided to Upper Deck in the amount of \$230,000. (Complaint, ¶¶ 8, 14.) Thus, the amount in controversy exceeds the jurisdictional minimum of this Court. See Dardovitch v. Haltzman, 190 F.3d 125, 135 (3d Cir. 1999) (“The sum claimed by the plaintiff controls if the claim is apparently made in good faith.”) (quoting St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 288-89 (1938)).

Venue

6. Venue lies in this Court because the state court where Plaintiff filed this action, and where the State Court Action is now pending, is within this judicial district. See 28 U.S.C. § 1446(a).

Respectfully submitted,

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 28th day of July, 2003, a copy of the foregoing
Notice of Removal was mailed, first class, postage prepaid to:

Kathleen K. Barksdale, Esquire
JOHN CHURCHMAN SMITH & ASSOCIATES, P.C.
117-119 North Olive Street
P.O. Box 229
Media, PA 19063-0229

SAMUEL E. COHEN, ESQUIRE